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6
7 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

8 DOLORES J. MURPHY, as Trustee of the
9 CHARLES M. MURPHY
ADMINISTRATIVE TRUST,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA.,

13 Defendant.

14 No. 1:24-cv-00260-KES-BAM

15 **[PROPOSED] ORDER RE**
STIPULATION TO CONTINUE JOINT
SCHEDULING REPORT DEADLINE
AND MANDATORY SCHEDULING
CONFERENCE (ECF NOS. 38, 39)

16 Plaintiff Dolores J. Murphy, as Trustee of the Charles M. Murphy Administrative Trust
17 (the “Administrative Trust”), initiated this suit for refund of tax/civil penalties against Defendant,
18 the United States of America, on February 29, 2024. (ECF No. 1.) Defendant, the United States
19 of America’s Answer or other responsive pleading in this case was due on August 5, 2024. The
initial mandatory scheduling conference is currently scheduled for July 16, 2025. (ECF No. 38).

20 On August 5, 2024, Defendant the United States filed a Notice of Motion to Dismiss
21 (ECF No. 17), United States’ Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and
22 12(b)(6) and Memorandum in Support (ECF No. 17-1), (hereinafter referred to as “Defendant
23 United States’ Motion to Dismiss”), and Declaration of Brian D. Johnson in Support of the
24 United States’ Motion to Dismiss (ECF No. 17-2).

25 On August 19, 2024, counsel for Plaintiff Dolores J. Murphy, as Trustee of the
26 Administrative Trust, filed Plaintiff’s Opposition to Defendant’s Motion to Dismiss Pursuant to
27 Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 19) and Declaration of Craig A. Houghton in

1 Support of Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P.
2 12(b)(1) and 12(b)(6) (ECF No. 19-1).

3 On August 22, 2024, the Court filed a Minute Order (ECF No. 20) ordering Robert C.
4 Bombard to file a declaration detailing the parties' meet and confer efforts prior to the filing of
5 Defendant United States Motion to Dismiss and Supporting Memorandum and Declaration.

6 On August 26, 2024, Robert C. Bombard filed the Declaration of Robert C. Bombard
7 (ECF No. 21) pursuant to the Court's August 22, 2024, Minute Order (ECF No. 20).

8 On August 28, 2024, Defendant United States filed United States' Reply to Plaintiff's
9 Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)
10 (ECF No. 22).

11 On August 30, 2024, Connor J. Pestovich filed a Notice of Appearance in this case (ECF
12 No. 23) with the Court to cover this case for Robert C. Bombard during his upcoming family
13 leave for several months. In early December of 2024 Mr. Bombard returned from his family
14 leave and resumed the role as lead counsel for Defendant United States in this case,

15 Per Minute Orders filed by the Court on September 16, 2024, and September 18, 2024,
16 (ECF Nos. 24 and 25), the Court set the hearing on Defendant United States' Motion to Dismiss
17 for November 4, 2024. The hearing on Defendant United States' Motion to Dismiss was held and
18 argued before the Honorable Kirk E. Sherriff on November 4, 2024. After the hearing, the Court
19 filed a Minute Order (ECF No. 27) allowing Plaintiff Dolores J. Murphy, as Trustee of the
20 Administrative Trust, to file a supplemental memorandum of points and authorities in support of
21 Plaintiff's Opposition to Defendant United States' Motion to Dismiss and Supporting
22 Declaration by November 4, 2024, and Defendant United States to file a reply thereto by
23 November 25, 2024, and to then take the matter under submission.

24 On November 4, 2024, Plaintiff Dolores J. Murphy, as Trustee of the Administrative
25 Trust, filed her Supplemental Memorandum of Points and Authorities Regarding the Proper
26 Determination of Reasonable Cause and No Willful Neglect Under 26 U.S.C. §§ 6651(a)(1) and
27 6651(a)(2) (ECF No. 28).

1 On November 25, 2024, Defendant United States filed United States' Response to
2 Plaintiff's Supplemental Memorandum of Points and Authorities Regarding the Proper
3 Determination of Reasonable Cause and No Willful Neglect Under 26 U.S.C. §§ 6651(a)(1) and
4 6651(a)(2) (ECF No. 29).

5 On January 13, 2025, the parties filed a Stipulation to Continue Joint Scheduling Report
6 Deadline and Mandatory Scheduling Conference (ECF No. 30) stipulating to a continuance of
7 the mandatory scheduling conference by ninety (90) days. On January 14, 2025, the Court issued
8 an Order Re Stipulation to Continue Joint Scheduling Report Deadline and Mandatory
9 Scheduling Conference (ECF No. 31) granting that stipulation and set the mandatory scheduling
10 conference for April 21, 2025.

11 On February 18, 2025, the Court issued an Order Denying in Part and Granting in Part
12 Defendant's Motion to Dismiss (ECF No. 32).

13 On March 4, 2025, Defendant United States filed United States' Answer to the Complaint
14 (ECF No. 33).

15 On March 18, 2025, Robert C. Bombard, former lead counsel for Defendant United
16 States in this case, filed a Notice of Withdrawal of Robert C. Bombard (ECF No. 34) notifying
17 the Court that he will be temporarily detailed to another component of the Department of Justice
18 for a period of six month that will not permit him to work on his Tax Division cases for the
19 duration of the detail, and that Connor J. Pestovich, another Trial Attorney with the Tax Division
20 who has appeared for Defendant United States in this case (ECF No. 23), will become new lead
21 counsel for Defendant United States in this case.

22 The parties have proffered that in late February and early March of 2025, counsel for
23 Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust, and Mr. Bombard, as former
24 lead counsel for Defendant United States, exchanged e-mail messages regarding both a proposed
25 settlement recommendation of this case by Defendant United States and Plaintiff Dolores J.
26 Murphy's, as Trustee of the Administrative Trust, questions and response thereto and position
27 regarding the merits of Plaintiff's case and a possible basis of settlement of this case.

1 The parties have also proffered that on April 4, 2025, counsel for Plaintiff Dolores J.
2 Murphy, as Trustee of the Administrative Trust, and Mr. Pestovich, as new lead counsel for
3 Defendant United States, continued settlement discussions regarding this case, including an
4 alternate settlement proposal of this case by Plaintiff Dolores J. Murphy, as Trustee of the
5 Administrative Trust.

6 On April 10, 2025, the counsel for the parties filed a Stipulation to Continue Joint
7 Scheduling Report Deadline and Mandatory Scheduling Conference (ECF No. 35), stipulating to
8 a continuance of the mandatory scheduling conference by thirty (30) days to May 21, 2025, or
9 such other date as may be determined by the Court. Counsel for the parties agreed to this
10 stipulation because Defendant United States' current counsel of record needed additional time to
11 review the case's files, filings, and history to help meaningfully develop a discovery plan as well
12 as to explore the possibility of resolving this case without further litigation, including the
13 alternate settlement proposal of this case made by Plaintiff Dolores J. Murphy, as Trustee of the
14 Administrative Trust, on April 4, 2025. The Court granted that stipulation on April 11, 2025,
15 continuing the mandatory scheduling conference to May 28, 2025 and the joint scheduling report
16 deadline to May 21, 2025.

17 The parties have proffered that counsel for Plaintiff Dolores J. Murphy, as Trustee of the
18 Administrative Trust, and Mr. Pestovich, as new lead counsel for Defendant United States, have
19 continued settlement discussions, including exchanging multiple e-mails messages and having
20 multiple telephone calls between May 15–19, 2025. The parties have proffered that during these
21 telephone calls and in these e-mail messages, counsel for Defendant United States has provided
22 an alternate settlement recommendation to counsel for Plaintiff Dolores J. Murphy, as Trustee of
23 the Administrative Trust, which counsel for the parties have discussed and evaluated. The parties
24 have proffered that, subject to further discussions and calculations, there may be a basis for
25 settlement based on Defendant United States' alternate settlement recommendation, but that they
26 need further time to fully discuss and investigate this possibility.

1 On May 20, 2025, counsel for the parties filed a Joint Status Report and Stipulation to
2 Continue Joint Scheduling Report Deadline and Mandatory Scheduling Conference (ECF No.
3 37), providing the Court with an update on the status of their settlement discussions in this case
4 and stipulating to a continuance of the mandatory scheduling conference by fifty (50) days to
5 July 17, 2025, or such other date as may be determined by the Court, to give the parties sufficient
6 time to obtain and review the IRS's calculations relating to Defendant United States' alternate
7 settlement recommendation and continue to meet and confer to determine whether a basis of
8 settlement of this case can be agreed upon by the parties and then file a further joint status report
9 with the Court.

10 The Court granted the parties' May 20, 2025, request on May 22, 2025, continuing the
11 Mandatory Scheduling Conference set for May 28, 2025, to July 16, 2025. (ECF No. 38).

12 The parties have proffered that counsel for Defendant United States has continued to
13 attempt in good faith to obtain the calculations from the IRS related to the United States'
14 05/16/2025 Alternate Settlement Recommendation; however, he has not received these
15 calculations from the IRS due to confusion at the IRS about who should be preparing these
16 calculations. Given that the parties need for the IRS's calculations to properly evaluate
17 Defendant United States' 05/16/2025 Alternate Settlement Recommendation, it is appropriate to
18 continue the Mandatory Scheduling Conference and associated deadline for the parties to file a
19 joint scheduling report with the Court to save the Court and the parties the time and expense of
20 preparing for this Mandatory Scheduling Conference while the parties are trying to determine
21 whether a basis of settlement of this case exists which would make this hearing unnecessary.

22 The Court finds that good cause exists to grant the requested extension of the mandatory
23 scheduling conference in this case.

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. The Mandatory Scheduling Conference currently set for July 16, 2025, is
26 continued to **September 16, 2025, at 9:00 AM in courtroom 8 (BAM) before Magistrate**
27 **Judge Barbara A. McAuliffe**. The parties shall appear at the conference remotely either via

Zoom video conference or Zoom telephone number. The parties will be provided with the Zoom ID and password by the Courtroom Deputy prior to the conference. The Zoom ID number and password are confidential and are not to be shared. Appropriate court attire required; and

2. The parties shall file a joint scheduling report seven (7) days prior to the scheduling conference.

The Court permits this continuance in the interest of justice, but endless continuances will not be permitted.

IT IS SO ORDERED.

Dated: **July 9, 2025**

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE